

**EXHIBIT 8 TO THE DECLARATION OF
LIN W. KAHN IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' SUPPLEMENTAL MOTION
FOR CLASS CERTIFICATION
(ECF NO. 446)**

REDACTED

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 SAN JOSE DIVISION

4 IN RE: HIGH-TECH EMPLOYEE ANTITRUST
LITIGATION

5 THIS DOCUMENT RELATES TO: NO: Master Docket No.
6 11-CV-2509-LHK

7 ALL ACTIONS.

8
9
10 CONFIDENTIAL - ATTORNEYS' EYES ONLY

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12
13 VIDEOTAPED DEPOSITION OF DANIEL ROBERT MCKELL
March 20, 2013
14 10:06 a.m.
Hyatt Regency Hotel
15 330 Tijeras, Northwest
Albuquerque, New Mexico
16

17
18 PURSUANT TO THE FEDERAL RULES OF CIVIL
PROCEDURE, this deposition was:

19 TAKEN BY: MR. SARAH R. SCHALMAN-BERGEN
Attorney for Plaintiffs

20 REPORTED BY: Mary Abernathy Seal, RDR, CRR, NM CCR 69
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24 (6941K) MAS
25

11:57 1 development jobs as jobs where there was lots of
2 competition and therefore recommended an SMA budget
3 for those jobs; is that fair?

4 MR. SHAH: Object to form.

11:58 5 A. It was business priority to get the best
6 talent they could hire in, so the -- since that's --
7 you know, where you're hiring from, that's a lot of
8 times where your concerns are, your -- so I don't
9 know that it's -- you know, if I break jobs into --
11:58 10 we break jobs into one of three categories -- job
11 families, we call them -- R&D, tech, and nontech,
12 there's a lot more -- if I take like HR, IT,
13 finance, those are jobs that exist in all
14 industries. When you start to limit to R&D within
11:59 15 the semiconductor manufacturing realm, the number of
16 people in those jobs starts to narrow. So it --
17 different market dynamics based on the job type. So
18 yeah, there's more competition for R&D jobs than
19 there is for HR jobs.

11:59 20 Q. [REDACTED]

21 [REDACTED]

22 MR. SHAH: Object to form.

23 A. [REDACTED]

24 [REDACTED]

11:59 25 [REDACTED] paying them to our goals

12:00 1 for those jobs.

2 Q. And is the purpose of the SMA budget to
3 help retain and attract talent for the R&D jobs?

4 MR. SHAH: Object to form.

12:00 5 A. I'd say it's to pay the goals and to
6 retain on the track side. Managers -- those hiring
7 decisions are sort of individual negotiations
8 between a candidate and a manager, so I think from
9 our perspective, it's mostly about our employees

12:00 10 that are at Intel.

11 Q. If an SMA budget is allocated to an R&D
12 job, can the manager offer more compensation to a
13 potential candidate?

14 MR. SHAH: Object to form.

12:01 15 A. It doesn't change what a manager can or
16 can't do. A manager has discretion to bring
17 employees in based on what they feel their value is.
18 Whether that's at the same pay of people who are
19 currently at Intel doing that job or deciding to pay

12:01 20 them more, I mean, that's a manager decision. To
21 the extent that you're moving the pay for a
22 population and the manager default is to bring
23 people in at the same rate of what they're paying
24 existing employees, then yes, over time, the more

12:02 25 you put in SMA, and that may translate to higher

12:18 1 Q. Did you know what the minimum and maximum
2 of the range in grade ■ were at the time?

3 A. I'm sure I did.

4 Q. Did you know what the midpoint of grade ■
12:18 5 was at the time?

6 A. I'm sure I did.

7 Q. And do you know where you were paid
8 relative to the midpoint?

9 A. I don't know.

12:18 10 Q. Did you receive any other promotions after
11 the promotion to grade ■?

12 A. ■

13 Q. Are you currently paid at a grade ■?

14 A. ■

12:19 15 Q. Do you know the current range of grade ■?

16 A. By memory, no. I mean I see the data, but
17 I don't remember the number.

18 Q. Have you received any increases of
19 compensation within grade ■?

12:19 20 A. ■

21 Q. How frequently have you received those
22 increases?

23 A. Each April, typically, but we didn't do
24 pay raises in 2009, so nobody -- most -- not

12:19 25 nobody -- most employees didn't receive a pay raise

12:19 1 in 2009.

2 Q. In the focals that you have had since you
3 have been in grade ■, what have your ratings been?

4 MR. SHAH: Object to form.

12:19 5 A. ■

6 Q. Has your manager changed at all since you
7 have been in grade ■?

8 A. Yes.

9 Q. How has your manager changed? Or excuse
12:20 10 me, who are the managers that you have had since you
11 have been in grade ■?

12 A. Jodie Hickam was the one what promoted me
13 to tactical grade ■, and Claire Gray has been my
14 manager since being a grade ■, after I changed jobs
12:20 15 from the exec comp role into another compensation
16 role.

17 Q. And when did you change jobs from the exec
18 comp role? Was that to the compensation manager
19 job?

12:20 20 A. No. I -- I was still comp and benefits
21 specialist by the official system. Internally, I
22 was base pay program manager, and that was in April
23 2008.

24 Q. What were your job responsibilities as
12:20 25 base pay program manager?

12:21 1 A. Kind of -- well, focal -- a lot of the
2 things with focal budgets, base pay increases. I
3 worked on projects to share more pay data with
4 managers in tools that they could access so they
12:21 5 could see how their employees were paid relative to
6 market and each other, and their Intel peers. I
7 have also worked -- excuse me -- I'd also work on
8 special projects that might deal with total
9 compensation design projects. Kind of a hodgepodge,
12:21 10 I guess, of responsibilities.

11 Q. Did you spearhead the project to share
12 more pay data with managers?

13 A. Yes.

14 Q. When did that project take place?

12:22 15 A. It evolved over time. I'd say it started
16 in earnest in late 2009, and is ongoing.

17 Q. What prompted the project?

18 A. We have the really wide salary ranges that
19 I talked about. In the US, for example, where a
12:23 20 grade 8 -- there's one range. So it covers the pay
21 for all jobs in that grade.

22 Internal to comp and benefits, we
23 benchmark pay against a smaller range, a more job
24 specific range, so the -- my project was basically
12:23 25 to take that data that we use in our back office and

12:25 1 with managers.

2 Q. For how long has the compensation and
3 benefits group been using the smaller pay lines
4 within the range?

12:25 5 MR. SHAH: Object to form.

6 A. We've always benchmarked to more specific
7 levels. Most of the time we match an Intel job code
8 in grade to a market survey job code in grade. The
9 accumulation of those would create the formation of
10 the wide range, the actual practice of creating
11 separate market ranges. I want to say it was
12 mid-2000, somewhere in there. I don't know the
13 exact year. I wasn't involved in the project. Like
14 between 2004, say, and 2006, somewhere around there.

12:26 15 Q. Is there an expectation that specific job
16 codes and grades will be paid around the specific
17 pay lines?

18 MR. SHAH: Object to form.

19 A. I'm not sure I follow your question.

12:27 20 Q. You said that compensation and benefits
21 uses the smaller pay lines to match the job code in
22 grade to the market survey job code in grade. Is
23 that fair?

24 A. Yes.

12:27 25 MR. SHAH: Object to form.

12:27 1 Q. What does Intel do to ensure that the
2 actual employees within the job code and grade are
3 being paid around those pay lines?

4 MR. SHAH: Object to form.

12:27 5 A. So we look at each job code as assigned to
6 a pay line, and so you can measure how each job code
7 is paid relative to that midpoint of the pay line.

8 [REDACTED]

9 [REDACTED]

12:28 10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Beyond that, there isn't control placed, I
14 guess, on where the manager pays employees relative
12:28 15 to that pay line, or that more specific external
16 market data. Right now it's given to them as
17 "Here's better data than the wide range, the GENI
18 range," we call them. How managers act on that is
19 really up to them.

12:28 20 Q. Since you have been involved in
21 compensation, have you reviewed from time to time
22 reports showing whether Intel's job codes are being
23 paid relative to the midpoint of the pay line?

24 MR. SHAH: Object to form.

12:29 25 A. We do that every year.

12:29 1 Q. That's a regular process?

2 A. That's a regular process.

3 Q. Who's involved in that process?

4 A. There's the central group that does, like

12:29 5 I said, the benchmarking and market pricing. We
6 review it. But the business consultants who support
7 the various business groups -- they review it, as
8 well. I'd say most of the analysis is done by the
9 business group consultants.

12:29 10 Q. Has it ever come to your attention that
11 Intel is paying a specific job code far different
12 from the midpoint of the pay line?

13 MR. SHAH: Object to form.

14 A. Jobs are below and above the midpoint all
12:29 15 over the range. Sometimes that's by intent,
16 particularly if you have a bunch of employees that
17 are new to the grade or a hiring ramp where, again,
18 because they're new, you'd expect them to be lower
19 in the range. Sometimes it's because some jobs
12:30 20 are -- you know, there's less supply of some jobs in
21 the market which supply demand in jobs. That
22 impacts it, too. So it varies. For the most part,
23 most jobs, we do a pretty good job of keeping, you
24 know, plus or minus 5 to 10 percent of our
12:30 25 midpoints.

12:30 1 Q. When you say [REDACTED] of the
2 midpoints, you're talking [REDACTED] of the
3 midpoints for the pay lines?

4 A. Yes.

12:31 5 Q. If a report brought to your attention that
6 a job specific job code was midpointed at more than
7 [REDACTED], or exceeded [REDACTED] of the
8 midpoint, would Intel take any corrective actions?

9 MR. SHAH: Object to form.

12:31 10 A. Within C&B we might recommend SMA. But so
11 that's our normal process, right, we want to keep
12 the jobs paid close to market, but we don't get
13 every job there, nor do we cut pay when jobs are
14 above. So it's a balance. You know, some of it
12:31 15 will come down to priorities in what you can afford,
16 what you can -- the budget you have been given. So
17 there have been years when we have not delivered SMA
18 because we preferred most of the money to go to
19 merit, so that managers can deliver
12:32 20 meritocratically.

21 Q. What's the purpose of the goal of keeping
22 the jobs paid close to market?

23 MR. SHAH: Object to form.

24 A. We have pay philosophies, and so we use
12:32 25 merit and SMA to deliver to those pay philosophies.

12:46 1 the focal tool.

2 Q. Okay. Explain to me what the focal tool
3 is.

4 A. It's an Internet-based tool that managers
12:46 5 access to make pay decisions.

6 Q. How do they use the focal tool to make pay
7 decisions?

8 A. A manager goes in and sees their
9 employees, enters a rating, performance rating, or
12:46 10 promotion, demotion, grade level changes, and based
11 on the employee's rating and their position in the
12 salary range, the merit -- the tool recommends a
13 base pay raise associated with that. The manager
14 then can change that amount up or down. Sometimes
12:47 15 they might completely disregard the tool and do 5
16 percent when the tool recommends 1 percent. It's up
17 to the manager. The tool gives them a -- they can
18 see how much budget they have to spend, and then
19 it's up to them whether they spend all that budget,
12:47 20 spend more than that budget, spend less than that
21 budget. It's kind of all over the place how they
22 behave.

23 Q. The managers have discretion to spend more
24 than they're budgeted?

12:47 25 A. They can overspend their budget.

12:47 1 Q. Where does that money come from?

2 A. For the most part, they'll spend to
3 budget. Some will overspend because some groups
4 underspend. Some will overspend and then the
12:47 5 decision at the executive level of each group --
6 they can roll up all the budgets and see, did they
7 spend to budget, or not. Most of the time they're
8 still underbudget. Sometimes it's overbudget, and
9 it's up to the executive of that group to decide to
12:48 10 tell people to go back and spend less or to say,
11 "It's close enough, I'm okay to -- that we spent a
12 little over our budget."

13 So it varies by group. We have some
14 groups that will overspend and some that underspend.

12:48 15 Q. Does Intel monitor how often groups
16 overspend their budget?

17 MR. SHAH: Object to form.

18 A. We have reports we look at each year, so
19 each cycle, which groups, where they are spending
12:48 20 relative to budget. But while most groups and most
21 managers spend to budget, some over and under, so in
22 aggregate, most of the time we're about at budget,
23 but sometimes a little over, sometimes a little
24 under.

12:49 25 Q. If a group continuously overspent on their

01:02 1 the manager's head, I guess.

2 Q. And have you used this Excel data dump to
3 study how often the manager decisions -- or to
4 compare the manager decisions to the
01:03 5 recommendations?

6 A. Yes.

7 Q. How often have you done that?

8 A. Me personally?

9 Q. Yes.

01:03 10 A. I'm starting to do it as a part of my
11 role, and looking back over multiple years to see
12 what the trend is. I don't know that it's been done
13 before. I have looked at it in previous years for
14 certain aspects, but not in a -- not in as
01:03 15 comprehensive a way as I'm intending to look at it
16 now.

17 Q. And what results or conclusions did you
18 learn or draw from reviewing those certain aspects?

19 MR. SHAH: Object to form.

01:04 20 A. We haven't completed the analysis, so I
21 haven't drawn conclusions yet.

22 Q. What have you learned about how often
23 managers accept the recommendations from the focal
24 tool?

01:04 25 MR. SHAH: Object to form.

01:04 1 A. It varies. Some managers are more likely
2 to just do what the tool is telling them. Others
3 are more likely to use more discretion. I don't
4 know that there's a consistent pattern by -- where
01:04 5 you could say, "Here's the behavior." To some
6 extent it's probably a coin flip, 50/50 proposition,
7 where managers will take the tool or not, so...

8 Q. Is one of your purposes in doing this
9 retrospective review to figure out ways to make the
01:05 10 focal tool more accurate?

11 MR. SHAH: Object to form.

12 A. Yes. Budget efficiency is what I'm
13 looking for. So my goal is, the tool makes smarter
14 recommendations.

01:05 15 Q. Have we now discussed all of the job
16 responsibilities that you have had since you have
17 been at Intel? The major job responsibilities?

18 A. Yeah, I think so.

19 MS. SCHALMAN-BERGEN: Okay. I think now
01:06 20 would be a good time for lunch.

21 (Recess from 1:05 p.m. to 1:52 p.m.)

22 Q. Good afternoon, sir.

23 A. Hi.

24 Q. Is there any reason why you can't continue
01:52 25 to give me your best testimony?

02:08 1 MR. SHAH: Object to form.

2 A. So we benchmark with those third-party
3 surveys to find out how much they're granting to
4 employees at the various grade levels. And so we
02:09 5 define stock matrices relative to those values. And
6 then the manager for exempt employees decides, based
7 on your individual performance and your expected
8 future contributions, whether you should be stock
9 share level 1, 2, 3, 4, or 5. So the actual stock
02:09 10 an employee gets depends on their manager's
11 assessment of their performance.

12 Q. What's the difference between stock share
13 levels 1, 2, 3, 4, or 5?

14 MR. SHAH: Object to form.

02:09 15 A. Stock share level 5 is no stock. It's a
16 zero shares. Stock share level 3 is the average
17 amount or kind of the middle-of-the-road amount.
18 Four is a little bit less, so 4 would be for really
19 new performers, or low performers. Stock share
02:10 20 level 1 would be for your best performers, the ones
21 that you think will contribute more to the future.
22 So because stock has future vested dates,
23 it's more of a forward-looking reward. So stock
24 share level 1 is two times the grants of stock share
02:10 25 level 3. So it's again that tenet, the meritocracy,

02:10 1 the individual best performers get the best rewards.

2 Q. And do the focal tools recommend or make
3 recommendations about how the stock share should be
4 allocated or distributed?

02:10 5 A. No. The manager has -- like the rating,
6 they pick the rating from -- there's descriptions of
7 what the rating is, and there's descriptions of the
8 stock share level, what each -- how you would
9 describe a person who should get stock share level

02:11 10 1. So then they decide, based on their employees
11 who fits that description, and there's an assumption
12 of a distribution of stock share levels, just like
13 there are distribution of the ratings. And then

14 they have a budget and so then they can -- if they
02:11 15 try to give all their employees stock share level 1,
16 they'd be way overbudget. If they gave everybody
17 stock share level 3, they'd be under budget. And

18 just like the money side groups are over- and under
19 budget based on how much the manager is willing to
02:11 20 justify being overbudget, they don't ever have to
21 worry about justifying being under budget, but they
22 over run, so...

23 Q. Is there a direct correlation between the
24 stock share level and the rating?

02:12 25 A. No, not by guideline. It would certainly

02:42 1 A. Yes.

2 Q. Describe how that worked.

3 A. So each grade level will have a -- either
4 a bonus target percent or a bonus -- a range of
02:43 5 bonus target percents that a manager can apply or
6 assign to an employee. [REDACTED]

7 [REDACTED]
8 [REDACTED] So higher base pay
9 equals higher bonus by virtue of the [REDACTED]

02:43 10 At the senior grades, [REDACTED]
11 [REDACTED]
12 [REDACTED] and then at the
13 senior grades, it might be [REDACTED]
14 [REDACTED] So
02:43 15 each grade has a range that a manager assigns to the
16 employee based on the value that they think that
17 employee brings at that grade level.

18 Q. And your description of the bonus
19 component just now, is that the same throughout the
02:44 20 time period from 2005 to 2009?

21 A. The bonus targets have been the same. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] In the
02:44 25 2005 to 2009, I don't believe there were any other

03:43 1 in.

2 Q. If you look through paragraph 8 -- do you
3 see that?

4 A. Yeah.

03:44 5 Q. Is paragraph 8, to the best of your
6 knowledge, true and accurate?

7 A. Yes.

8 Q. Okay. And looking at the first sentence
9 about employee evaluations, does that reflect or is
03:44 10 that consistent with the conversation we've had this
11 morning about employee ratings?

12 A. Yes, those are the guidelines or the
13 expectations, the actual practices plus or minus
14 those.

03:45 15 Q. And the expectations are that there are
16 certain percentages of employees that are rated in
17 each of the different categories?

18 A. Yes.

19 Q. The last sentence of paragraph 8 you talk
03:45 20 about a [REDACTED]. Do you
21 see that?

22 A. Yes.

23 Q. Can you briefly describe what you mean by
24 that?

03:45 25 A. So companies -- or as a compensation

03:45 1 practice, there's two main ways that you can deal
2 with different job markets within the same country.
3 You can establish separate market ranges for those
4 locations, or you can apply a geographical
03:45 5 differential, a premium on top of salary ranges.

6 Intel prefers to [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
03:46 10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Q. If you go to paragraph 9, do you see that?
03:46 15 A. Uh-huh. Yes.

16 Q. Fair to say in paragraph 9 you're talking
17 about the wide ranges of total pay available within
18 each grade?

19 A. Yes.

03:47 20 Q. Is everything in this paragraph accurate?

21 A. I was looking at page 19 of Exhibit D.
22 That's page 20.

23 Q. And for the record, we're looking at
24 Exhibit D, and you have said that actually, the
03:47 25 salary ranges you were referring to are listed on

03:52 1 employee would be assigned -- each job code would be
2 assigned to a pay line, so employees would have --
3 for purposes of our analysis, employees would have
4 pay relative to multiple midpoints, not just one.

03:53 5 Q. And one of those midpoints is the pay
6 line?

7 A. One of those is the pay line.

8 Q. In paragraph 10, you say, "Intel's
9 individual employee total pay determinations were
03:53 10 not made company-wide, but were made by thousands of
11 business unit managers who had discretion with
12 respect to the amount and composition of each
13 individual's compensation."

14 Do you see that?

03:53 15 A. Yes.

16 Q. Was that discretion limited by the focal
17 tools that we've discussed?

18 MR. SHAH: Object to form.

19 A. Not limited. Like I said, the tool gives
03:53 20 the managers a recommendation, a starting point, and
21 the manager can give ten times that or half that.
22 It's up to them. They can overspend budget, they
23 can underspend budget. We don't exert control at a
24 direct manager. It would be to the discretion of
03:54 25 the executive whether to guide managers to change

03:54 1 their behavior or not. That would come from the
2 management, not from C&B.

3 Q. What was your purpose in including that
4 first sentence of paragraph 10?

03:54 5 MR. SHAH: Object to form.

6 A. Just that managers make the pay decisions.
7 They don't -- we make a recommendation and they
8 decide. And so it's not -- in some companies,
9 compensation or HR makes the pay decisions, managers
03:54 10 don't have a say into it. So it was just clarifying
11 within our company the practices. Managers get to
12 make that call.

13 Q. Did you understand that it was important
14 to Intel's position in opposition to class
03:55 15 certification to characterize these pay
16 determinations as individualized?

17 MR. SHAH: Object to the form of the
18 question. And also I'll instruct you not to answer
19 to the extent that it calls for you to describe any
03:55 20 attorney/client communication.

21 Q. And I just want to be fair, so if you
22 don't have any information to answer my question
23 without disclosing attorney communications, you
24 don't have to answer.

03:55 25 A. No, I think the sentence reflects the

03:55 1 practice. We have 10,000 managers at Intel. We
2 load recommendations into a tool, and they decide
3 the compensation. It's a -- so the sentence is a
4 reflection of practice. Whether that's important or
03:55 5 not is irrelevant to me. It's reality of practice.

6 Q. Have you ever heard anyone use the term
7 "peanut butter behavior"?

8 A. Yes.

9 Q. What's your understanding of that term
03:56 10 with respect to compensation at Intel?

11 MR. SHAH: Thanks for that clarification.

12 Q. I don't want to know if you have any other
13 understanding of it.

14 A. So within Intel, there's various rewards
03:56 15 that managers can allocate to employees. There's
16 base pay increases, there's bonus target increases,
17 ratings, stock share levels, promos, job
18 assignments, whatever. So there's a series of
19 goodies that a manager can allocate, and peanut
03:56 20 butter means trying to spread it out as far as it
21 can go. And so that might be I give you the best
22 rating and middle stock, and to somebody else I give
23 the best rating and, you know -- so they -- by
24 virtue of spreading out as many positive messages as
03:57 25 they can, they dilute meritocracy. And so typically

03:59 1 That said, because it's one of the five
2 key tenets of the T-COMP philosophy, meritocracy, it
3 was a high priority for us. And in the time frame
4 of this lawsuit, 2005 to 2009, we took -- we put
03:59 5 extra emphasis on meritocracy to the point of
6 changing merit matrices so that the outstanding --
7 the raises to outstanding employees would be even
8 higher than what we had historically practiced.

9 Q. Is the impact of peanut butter behavior to
03:59 10 decrease pay differential between employees?

11 MR. SHAH: Object to form.

12 A. Yeah. The more you peanut butter, the
13 less differentiation you have. Some of that varies
14 by -- based on the individual, because an individual
04:00 15 may not get outstanding every single year. So even
16 though a manager could be peanut buttering to
17 somebody who's been outstanding, they would still
18 have pay differentiation better than the person who
19 was always successful. It would have just been
04:00 20 less. So our desire was to make sure that truly the
21 best performers were getting the best rewards, and
22 helping managers to -- encouraging managers to do
23 that based on the guidelines that we had and what
24 the tool recommended.

04:00 25 Q. Are you aware of any studies that were

04:25 1 in 2006?

2 A. So that was the change in the base pay
3 strategy to be at market versus behind market. So
4 when they decided to move base pay to market, the

04:25 5 decision was to do that over a three-year period,
6 not do it in a one-year move.

7 Q. The next bullet point says, "However, hot
8 jobs may require an immediate fix to address market
9 position issues."

04:26 10 Do you see that?

11 A. Yes.

12 Q. And is that consistent with your
13 understanding of how SMAs would work?

14 MR. SHAH: Object to form.

04:26 15 A. Yeah. A job where the market for that job
16 was moving faster than other jobs and so our market
17 position was deteriorating. Those would be
18 candidates for SMA.

19 Q. We talked about POM, or position of
04:26 20 market, earlier.

21 A. Yes.

22 Q. Can you define that?

23 A. Position of market would be your -- you
24 take the -- let's say I was looking at it for grade
04:27 25 5s in the US. I would take the average pay of Intel

06:27 1 Q. Okay. Separate, or sort of a different
2 topic, you testified earlier about SMA budgets that
3 are sometimes given to managers. Do you recall
4 that?

06:27 5 A. Yes.

6 Q. Do managers have discretion on how they
7 allocate the SMA budget?

8 A. The SMA gets loaded into the tool by each
9 individual. The manager can decide whether to give
06:28 10 that SMA or not. We instruct managers if -- that
11 they should allocate SMA meritocratically. So if an
12 employee is eligible for SMA, who is a poor
13 performer by virtue of low expectations or an
14 improvement-required rating, that the manager should
06:28 15 not deliver SMA to that employee, but instead give
16 that to somebody rated outstanding or exceeds
17 expectation who was paid lower than their peers. So
18 we expect them to spend the full budget. How they
19 actually allocate that is up to them.

06:28 20 Q. Okay. You previously testified about both
21 internal equity and meritocracy. Do you believe
22 that those two philosophies exist at Intel?

23 A. They do exist. I don't believe that
24 they're mutually exclusive. I think meritocracy
06:29 25 definitely exists in pay raises and grade changes

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 SAN JOSE DIVISION

4 IN RE: HIGH-TECH EMPLOYEE ANTITRUST
5 LITIGATION

6 THIS DOCUMENT RELATES TO:

7 ALL ACTIONS.

8
9 NO: Master Docket No. 11-CV-2509-LHK

10 REPORTER'S CERTIFICATE

11 I, MARY ABERNATHY SEAL, New Mexico CCR
12 #69, DO HEREBY CERTIFY that on March 20, 2013, the
13 Deposition of DANIEL ROBERT McKELL was taken before
me at the request of, and sealed original thereof
retained by:

14 Attorney for the Plaintiffs
15 Ms. Sarah R. Schalman-Bergen
16 BERGER & MONTAGUE, P.C.
17 1622 Locust Street
Philadelphia, Pennsylvania 19103-6365
(215) 875-3000

18 I FURTHER CERTIFY that copies of this
19 Certificate have been mailed or delivered to all
20 Counsel, and parties to the proceedings not
represented by counsel, appearing at the taking of
the Deposition.

21 I FURTHER CERTIFY that examination of this
22 transcript and signature of the witness was required
23 by the witness and all parties present.
24 On _____ a letter was mailed or delivered to Mr.
Sujal J. Shah regarding obtaining signature of the
25 witness, and corrections, if any, were appended to
the original and each copy of the Deposition.

1 I FURTHER CERTIFY that the recoverable
2 cost of the original and one copy of the Deposition,
3 including exhibits, to Mr. Sarah R. Schalman-Bergen
4 is \$_____.

5 I FURTHER CERTIFY that I did administer
6 the oath to the witness herein prior to the taking
7 of this Deposition; that I did thereafter report in
8 stenographic shorthand the questions and answers set
9 forth herein, and the foregoing is a true and
10 correct transcript of the proceeding had upon the
11 taking of this Deposition to the best of my ability.

12 I FURTHER CERTIFY that I am neither
13 employed by nor related to nor contracted with
14 (unless excepted by the rules) any of the parties or
15 attorneys in this case, and that I have no interest
16 whatsoever in the final disposition of this case in
17 any court.

18 _____
19 Mary Abernathy Seal
20 BEAN & ASSOCIATES, INC.
21 NM Certified Court Reporter #69
22 License Expires: 12/31/13

23 (6941K) MAS
24 Date taken: March 20, 2013
25 Proofread by: JB

1 IN RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION

2 WITNESS SIGNATURE/CORRECTION PAGE

3 If there are any typographical errors to
4 your deposition, indicate them below:

5 PAGE LINE

6 _____ Change to _____

7 _____ Change to _____

8 _____ Change to _____

9 _____ Change to _____

10 Any other changes to your deposition are
11 to be listed below with a statement as to the reason
for such change.

12 PAGE LINE CORRECTION REASON FOR CHANGE

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 I, DANIEL ROBERT McKELL, do hereby certify
20 that I have read the foregoing pages of my testimony
as transcribed and that the same is a true and
21 correct transcript of the testimony given by me in
this deposition on March 20, 2013, except for the
changes made.

22

23 _____
DANIEL ROBERT McKELL

24 (6941K) MAS Proofread by: JB

25